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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------------------------|-------------|----------------------|---------------------|------------------|
| 10/755,984 | 01/13/2004 | Garrett N. Ford | 122142.00009 | 2249 |
| 34282 | 7590 | 01/10/2006 | EXAMINER | |
| QUARLES & BRADY STREICH LANG, LLP | | | NGUYEN, SON T | |
| ONE SOUTH CHURCH AVENUE | | | ART UNIT | PAPER NUMBER |
| SUITE 1700 | | | 3643 | |
| TUCSON, AZ 85701-1621 | | | | |

DATE MAILED: 01/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/755,984 | FORD, GARRETT N. | |
| | Examiner | Art Unit | |
| | Son T. Nguyen | 3643 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10/28/05 & 3/29/05.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-21 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 13 January 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

1. Applicant's argument in the Appeal Brief filed 10/28/05 was found persuasive, therefore, the final rejection mailed on 6/10/05 has been withdrawn in view of new grounds of rejection as set forth below. This new rejection will be made final since Applicant's amendment filed 3/29/05 necessitated new grounds of rejection.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1,2,10,12,15-20** are rejected under 35 U.S.C. 102(b) as being anticipated by Adam (840892).

For claim 1, Adam teaches an article of footwear for a hooved animal comprising a support 5,15; an enclosure 10 including a wall 10 on the support and a pair of tongues (at refs. 11 and 6) each of which is of one piece with the support and each of which has a major portion (the flaps) which is pivotable relative to the wall.

For claim 2, Adam teaches wherein said tongues are located diametrically opposite one another (one in the front, ref. 11, and one in the back, ref. 6, of the article).

For claim 10, Adam teaches means for tightening 8,9.

For claim 12, Adam teaches wherein said tightening means comprises a tightening element (the straps) which engages said enclosure and an operating device

(the buckle) designed to exert a force on said tightening element so as to draw said enclosure around the leg of the animal.

For claim 15, Adam teaches wherein the operating device is mounted on the wall (once the straps are tightly fastened, the buckles will be securely fixed on the wall, hence, mounted). See definition of mounted.

For claim 16, Adam teaches wherein the operating device is mounted on one of the tongues (ref. 6).

For claim 17, Adam teaches wherein the tightening element 8,9 passes through the wall (through cutouts 13) and is slidable relative thereto.

For claim 18, in addition to the above mentioned features, Adam further teaches at least one band of elastic material 8,9 connected to the tongue and the wall through cutouts 13.

For claim 19, Adam teaches the tongue has a pair of opposed edges (left and right edges) and the at least one band 8 joins one of the edges to the wall, the enclosure including an additional band 9 joining the other of the edges to the wall.

For claim 20, Adam teaches the tongue and the band are made from different pieces of material (see fig. 3, cross section symbol for materials).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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5. **Claims 3-6,21** are rejected under 35 U.S.C. 103(a) as being unpatentable over Adam (as above) in view of Dodd (GB 2397483A).

For claims 3-4, Adam is silent about at least one band of pleated material connected to one of the tongues and to the wall. Dodd teaches an article of footwear for hoofed animals comprising at least one band of elastic material 11 connected to one of the tongues 8 and to the wall 5. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ at least one band of elastic material as taught by Dodd connected to one of the tongues and to the wall of the article of Adam in order to facilitate fitting of the article onto the hoof of the animal (Dodd, page 10).

Adam as modified by Dodd is silent about the material being pleated. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the band of Adam as modified by Dodd out of a pleated material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice. *In re Leshin*, 125 USPQ 416.

For claim 5, in addition to the above, Dodd teaches wherein said one tongue has a pair of opposed edges (on left and right side) and said one band 11 joins one of said edges to said wall, said enclosure including an additional band of elastic material (the other side) joining the other of said edges to said wall. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ at least one band of elastic material on opposing edges of the tongue and wall as taught by

Dodd connected to one of the tongues and to the wall of the article of Adam in order to facilitate fitting of the article onto the hoof of the animal (Dodd, page 10).

For claim 6, see the above claims.

For claim 21, see claim 20.

6. **Claims 7-9** are rejected under 35 U.S.C. 103(a) as being unpatentable over Adam (as above) in view of John (1043978).

Adam is silent about a protrusion on one of the tongues. John teaches a horse boot comprising a protrusion (either the loop 12 or the strap through ref. 12) on a tongue of the boot. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a protrusion such as a loop or strap as taught by John on the tongue of the article of Adam in order to provide cushioning to the horse and help facilitate manipulation of the tongue.

7. **Claims 11,13-14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Adam (as above) in view of Hammerslag (6202953).

For claims 11,13, Adam is silent about a removable cover for at least part of the tightening means. Hammerslag teaches a tightening means (see fig. 4, all components of ref. 74) for a footwear being covered in a removable cover 60 (removed by unscrewing screws 66 to expose the inside of the housing which contains the tightening means). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ tightening means with a removable cover as taught by Hammerslag in place of the straps of the footwear article of Adam in order to, not only

provide an alternative tightening means for the article, but one which has a cover to protect the tightening means.

For claim 14, in addition to the above, the tightening means of Hammerslag includes an operating device comprising a rotary mechanism. It would have been an obvious substitution of functional equivalent to substitute the straps of Adam with tightening means with rotary mechanism as taught by Hammerslag, since it would perform the same function to draw the enclosure around the leg of the animal.

Response to Arguments

8. Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Son T. Nguyen
Primary Examiner
Art Unit 3643

stn